

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

July 29, 1999

PUBLIC UTILITIES COMMISSION
Investigation of Stranded Costs,
Transmission and Distribution Revenue
Requirements and Rate Design of
Isle-Au-Haut Electric Company

Docket No. 98-599

ISLE-AU-HAUT ELECTRIC COMPANY
Request for Exemption from Requirements
Pursuant to 35-A Section 3504

Docket No. 98-671

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

By way of this Order, we grant Isle-Au-Haut Electric Power Company's (IAH) request that it be exempted from the provisions of the state's Electric Restructuring Act, Chapter 32 of Title 35-A Maine Revised Statutes Annotated, but deny IAH's request that it be given a blanket exemption from the other provisions of Title 35-A and our rules.

On August 10, 1998, the Commission initiated an investigation of IAH's stranded costs, transmission and distribution utility revenue requirements and rate design pursuant to the requirements of 35-A M.R.S.A. § 3208. On September 28, 1999, we received a request from Weil and Howe, Inc. on behalf of IAH, asking that IAH be exempted from any and all requirements of Title 35-A, with the exception of sections 3502 and 3503, and exempt from any and all Commission rules promulgated in accordance with Title 35-A. In its request IAH stated:

The burden of complying with electric restructuring laws and rules is clearly beyond its [IAH's] capacity. Given the cost of distribution on the island, generation savings would be an almost insignificant factor in total delivered cost.

In a follow-up letter to the Commission, Weil and Howe clarified that IAH's request was a blanket exemption from the entire Title 35-A and all current rules and any rule promulgated in the future by the Commission pursuant to Title 35-A. In a filing dated October 9, 1998, IAH provided further clarification that, upon further reflection, there were certain sections of Title 35-A and the Commission's rules which it did not believe should be waived. Along with this filing, IAH provided a list of the sections for which it sought waivers and a brief explanation of why it sought such waivers.

Section 3504 of Title 35-A authorizes the Commission to exempt any consumer-owned utility with not more than 150 customers from any of the requirements of Title 35-A and the Commission's rules except 35-A M.R.S.A. §§ 3202 and 3203. We agree

with IAH that it should be exempted from the requirements of the provisions of Title 35-A governing electric utility restructuring.

IAH provides service to approximately 80 customers on an island located several miles off Deer Isle, Maine. In the 1999 legislative session, the Legislature enacted legislation which would exempt from the provisions of the Electric Restructuring Act any electric utility which is not connected to any other transmission and distribution utility. P.L. 1999, ch. 398, § E-1 (effective September 18, 1999). While IAH is connected to the mainland transmission system and thus not eligible for this exemption, we find that IAH should, nonetheless, be exempted from the provisions of the Restructuring Act pursuant to the provisions of 35-A M.R.S.A. § 3504.

IAH's total revenues are approximately \$80,000, of which only 15% are power supply related. It is extremely doubtful that competitive service providers would find such a small, remote market attractive. As evidenced by the numerous rulemakings initiated to implement restructuring, the restructuring process has proven to be complex. It is, therefore, highly unlikely that the benefits expected to be derived from a competitive retail market in IAH's case would exceed the costs of implementing restructuring. Accordingly, IAH's request for an exemption from the provisions of Chapter 32 of Title 35-A, the Electric Restructuring Act, and all Commission rules promulgated to implement restructuring, is granted. The Commission's investigation of IAH's stranded costs, transmission and distribution utility revenue requirements, and rate design in Docket No. 98-599 is, therefore, dismissed.

At this time, however, we are not inclined to grant IAH's request for a "blanket" exemption from the requirements of Title 35-A. While IAH has, in a subsequent filing, narrowed the scope of its initial request, the extent of the waiver sought is still quite extensive. In many instances, we find that the statutory sections requested for waiver go to the heart of the Commission's authority to regulate a public utility (e.g., 35-A M.R.S.A. § 112 - Power to Obtain Information; 35-A M.R.S.A. § 113 – Management Audit; and 35-A M.R.S.A. § 115 – Enforcement of State Laws). In other instances, it appears that the statute for which waiver is sought imposes little burden on IAH (e.g., 35-A M.R.S.A. § 3102 – Recovery of Cost of Canceled Plant). While the Legislature has granted the Commission broad authority to exempt small, consumer-owned electric utilities from the provisions of Title 35-A, the Legislature has not, at this point, deregulated such entities. To the extent that IAH believes that it should be totally deregulated, the appropriate forum for such action is the Maine Legislature. At this time, however, we do not believe granting the blanket exemption is warranted by the information presented. Therefore, the remainder of IAH's request will be dismissed without prejudice.

While we will not grant IAH's request for a blanket exemption at this time, we do believe that it would be constructive for representatives of each of the small consumer-owned electric utilities, the Public Advocate's Office and the Commission's Staff to meet and develop a list of statutory provisions and rules which small consumer-owned electric utilities should not be required to follow. Given the extremely heavy workload

Accordingly, it is

1. That Isle-Au-Haut Electric Company's request that it be exempted from the provisions of Title 35-A, Chapter 32 and the Commission's Rules promulgated to implement the provisions of Chapter 32 is granted;
2. That the Commission's investigation of stranded costs, transmission and distribution utility revenue requirements, and rate design in Docket No. 98-599 be closed;
3. That the remainder of IAH's request for exemption be dismissed without prejudice.

BY ORDER OF THE COMMISSION

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.